



4-15-09

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ANASTASIA BEVERLY HILLS, INC.
ANASTASIA SOARE
ANASTASIA SKIN CARE, INC.

Opposers

v.

ANASTASIA MARIE LABORATORIES, INC.

Applicant

TTAB

Opposition No.
91188736

77150308

REPLY IN SUPPORT OF MOTION TO DISMISS

I. The Rules Are The Rules.

Opposers' own citation of Rule 2.119(a) stating that every filing must state "...the date and manner in which service was made" -- supports this Motion. (Emphasis added). Service after the opposition was filed rendered the opposition a nullity regardless of whether it was made one week, one day or one hour before the deadline. Opposers' claim that their defective opposition was "cured" because it was "timely" misses the mark. Timeliness is not the issue. The deficiency of the filed opposition -- is.

The opposition did not comply with service Rules so fundamental that the Board has addressed precisely the issue which this Motion addresses and which opposers avoid:

Proof of Service is meaningless in the absence of actual service in accordance with the statements contained in the proof of service. The requirement of the rules is for proof of service, not a promise to make service at some time in the future. (Emphasis added) *Springfield Inc. vs. XD*, 86 USPQ2d 1063 (TTAB 2008).



04-14-2009

No discussion of regional time differences, deadlines falling on weekends or tortured interpretation of the Rules can change the fact that opposers had not served the opposition despite having told the Office that they had served it – in contravention of Rules 2.101(a); 2.101(d)(4); 2.119(a). (See attached *Bass Decl.* regarding receipt.)

Opposers' reliance upon *The Equine Touch Foundation, Inc. v. Equinology, Inc.* is misplaced. There, petitioner's amended service was allowed to cure the defective service based upon the premise that petitioner would not be time-barred. Here, opposers' filing was defective due to the fact that they had not served Applicant but misstated to the Office that they had done so. Their claim that the defective opposition was "cured" by service before the deadline is baseless. To "cure" the deficiency, opposers would have had to serve applicant and re-file the opposition. They could not do so as they were out of time, which is *precisely* the reason that the Board ruled against opposer in *Springfield*.

Opposers' argument to allow the opposition to proceed in derogation of Rules 2.101(a)(b)(d)(4) and 2.119(a) would validate "post-filing/pre-deadline" service and eviscerate the letter and spirit of these Trademark Rules as well as the Board's reasoning and ruling in *Springfield. Id.*

II. Conclusion.

Applicant respectfully requests that the instant opposition be declared a nullity.

Dated: April 14, 2009

Respectfully submitted,

/daphne sheridan bass/
Daphne Sheridan Bass
Attorney for Applicant
Anastasia Marie Laboratories, Inc.

DECLARATION OF DAPHNE SHERIDAN BASS

I, Daphne Sheridan Bass, do declare that I have personal knowledge of all statements made herein; that all statements made herein are true, and that if called to do so, I would competently testify as to the truth of these statements.

1. I am the attorney representing the applicant herein. I have personal knowledge of the following facts and would competently testify as to their truth if called upon to do so.
2. On Saturday, January 31, 2009, I received a letter by certified mail from opposers' attorneys transmitting the subject notice of opposition.
3. Upon reading opposers' postal receipt in this matter, I investigated the discrepancy between the actual date of receipt of January 31, 2009 and the date listed of January 29, 2009. I spoke with a "Ms. Perry" of the U.S. Postal Inspection Service in Pasadena, California. Ms. Perry told me that it is not uncommon for a mail carrier to scan mail on one date and deliver the same mail 1-2 days later. In such case, Ms. Perry told me, the date scanned by the U.S. Postal Service will not reflect the actual date of delivery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 14th day of April, 2009 in Santa Monica, California.

/daphne sheridan bass/
Daphne Sheridan Bass

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the within REPLY IN SUPPORT OF MOTION TO DISMISS and DECLARATION OF DAPHNE SHERIDAN BASS is served this date upon all parties to this proceeding by email by agreement to their attorneys John May at John@May.us and Darin Chavez at dchavez@dchavezlaw.com.

Date: April 14, 2009

/daphne sheridan bass/

Daphne Sheridan Bass



CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that the attached Reply to Motion to Dismiss and Declaration in this Opposition Proceeding No. 91188736 is addressed and mailed, this date, Express Mail postage pre-paid, to the TTAB – NO FEE, Assistant Comm. Of Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450.

April 14, 2009

Daphne Sheridan Bass
Daphne Sheridan Bass